ANGELITA AUNKO HAMILTON
v.
ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-16-A Decided June 21, 1989

Appeal from a decision of the Acting Anadarko Area Director disapproving an application for an educational loan under the Indian Revolving Loan Fund program.

Vacated and remanded.

1. Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

Under 25 U.S.C. § 1463 (1982), the decision whether to approve a loan from the Indian Revolving Loan Fund is a decision requiring the exercise of discretion.

2. Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions

The Board of Indian Appeals lacks authority to review a decision of a Bureau of Indian Affairs official insofar as it is based on the exercise of discretion. However, the Board has authority to determine whether proper procedures were followed in reaching the decision.

APPEARANCES: Angelita Aunko Hamilton, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Angelita Aunko Hamilton challenges a November 22, 1988, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (appellee; BIA), disapproving her application for an educational loan under the Indian Revolving Loan Fund program. For the reasons discussed below, the Board vacates that decision and remands this case for further consideration.

Background

The Indian Revolving Loan Fund program is administered pursuant to Title I of the Indian Financing Act of 1974, 25 U.S.C. §§ 1461-1469

(1982), 1/ as amended by the Act of October 4, 1984, P.L. 98-449, 98 Stat. 1725. 25 U.S.C. § 1461, as amended, authorizes "loans to Indians having a form of organization that is satisfactory to the Secretary and * * * loans to individual Indians." 25 U.S.C. § 1463 provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment, and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable term and conditions."

Implementing regulations are found at 25 CFR Part 101. 25 CFR 101.2 provides in relevant part:

> (b) Direct loans may be made by the United States to eligible tribes, individual Indians and Natives, corporations, partnerships or cooperative associations. Direct loans from the United States will be made for the following purposes:
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> * * * * * *
>
> (3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

On May 9, 1988, appellant applied to the Anadarko Agency, BIA, for an educational loan. She requested a loan in the total amount of $9,000, or $3,000 per year, to attend law school.

The agency credit committee met on September 16, 1988, to consider appellant's application, among others. The minutes of the meeting indicate that the committee tentatively recommended approval of appellant's loan contingent upon her mortgaging her trust property for security. On September 20, 1988, the agency Superintendent forwarded appellant's application, together with the credit committee minutes, to the Branch of Credit of the Anadarko Area Office. The Superintendent's memorandum states, "It is recommended that consideration be given to the approval of the applications of [appellant and two other applicants]. No reason is apparent why they would not benefit from this loan."

By memorandum of November 22, 1988, appellee requested the Superintendent to advise appellant that her application had been disapproved and that she had the right to appeal. Appellee stated that the reasons for disapproval were:

> 1. The applicant has not shown evidence that adequate funds are not available from other sources such as grants, scholarships or other loan sources as required by 25 CFR 101.2b(3). These

1/ All further references to the United States Code are to the 1982 edition.

sources include but are not limited to Guaranteed Student Loans (GSL), Perkins Loans, and Supplemental Educational Opportunity Grants (SEOG).

2. The application does not indicate in Part 25 how the total balance of the estimated budget requirements are to be met. The total source is only $4,086 of the balance of $12,180 required after the requested loan is applied. The availability or source of all funds needed is required in order to establish reasonable prospects that the applicant is able to remain in school.

3. The application does not show the amount of contribution being made by the family towards meeting the educational expenses. The only source of funds shown is from the American Indian Scholarships and from the requested loan. No contribution of income from the applicant's spouse is shown nor has the spouse offered to cosign on the loan.

By letter of December 20, 1988, the Superintendent informed appellant that her application had been disapproved and reiterated the reasons for disapproval stated in appellee's memorandum. The Superintendent's letter concluded: "In the event you are dissatisfied with the above decision, you may request a hearing by mail or in person before the Superintendent or his designated representative, within 30 days from the date of this letter of notification; otherwise, the above decision becomes final."

On January 2, 1989, appellant wrote to the Superintendent, supplying further information concerning her application. Appellant apparently wrote in response to the final paragraph of the Superintendent's December 20 letter. The Superintendent treated her letter as a notice of appeal and forwarded it to appellee. By memorandum of March 6, 1989, appellee forwarded the matter to the Washington, D.C., office of BIA, as an appeal. Appellee's transmittal memorandum states in part:

The primary comments we have are that the amount needed should be less than the original amount requested. We would also have some concern on the applicant's prospects for completion of the course on the basis of the large number of withdrawals and incompletions on the transcript for undergraduate studies. There would also be little security for the loan as this would essentially be a signature loan by the applicant and spouse.

On March 21, 1989, the appeal was transmitted to the Board of Indian Appeals for consideration in accordance with new appeal procedures for BIA and the Board which became effective on March 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989).

The appeal was docketed on March 22, 1989. Only appellant filed a brief.

Discussion and Conclusions

It is apparent from the administrative record in this matter that the procedures followed in the consideration of appellant's loan application were irregular, at least insofar as they concerned communications with appellant. The only decision letter sent to appellant was the Superintendent's December 20, 1988, letter, which did not inform her that the decision to deny her application had been made by appellee, rather than the Superintendent. The December 20 letter erroneously informed her that she could request a hearing "by mail or in person" before the Superintendent. 2/ Appellant wrote to the Superintendent, and her letter was transmitted to the Area Office, which transmitted it to the Washington, D.C., office of BIA. There is no indication that appellant was informed that her documents were being considered as an appeal. Appellant states that she believed, after talking to Area Office personnel, that her application was being reconsidered in light of further documents which she had submitted.

Appellant submitted supplemental documents during various stages of this matter, but it is difficult to tell whether these documents were considered by the reviewing officials. Further, there is no indication whether the agency credit committee's recommendation concerning the mortgaging of appellant's trust property was considered and rejected, or not considered at all. 3/ Appellee's March 6, 1989, memorandum indicates that the loan would be a "signature loan." 4/ However, appellant's application

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2/ 25 CFR Part 101 does not contain any appeals procedure. Accordingly, the appeals procedure set out in 25 CFR Part 2 is applicable to decisions made under Part 101. See 25 CFR 2.2 (1988); 25 CFR 2.3 (54 FR 6480, Feb. 10, 1989). Under the appeals regulations in effect at the time, appellee's decision was appealable to the BIA official exercising the administrative review authority of the Commissioner of Indian Affairs. 25 CFR 2.3(a) (1988).

3/ 25 CFR 101.13, Security, provides in part:

"(a) United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. * * *

"(b) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by an individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 152.34 and the Act of March 29, 1956 (70 Stat. 62; (25 U.S.C. 483a))."

25 CFR 101.13 also authorizes loans to be secured by, inter alia, the assignment of income from trust property and, with the approval of the Commissioner of Indian Affairs, the pledging of crops grown on trust property. 25 CFR 101.13(d) and (f).

4/ Appellee's March 6 memorandum also states that the amount needed by appellant should be less than she originally requested. In her brief before the Board, appellant states that, based on her completion of 1 year, she is now requesting $6,000 rather than $9,000.

shows that she owns trust property and that she also owns non-trust property jointly with her husband.

[1, 2] 25 U.S.C. § 1463 vests the Secretary with discretion in making loans from the Indian Revolving Loan Fund. Therefore, the ultimate decision whether to approve a loan to appellant is a decision based on the exercise of discretion. Pursuant to 43 CFR 4.330(b)(2), the Board lacks authority to adjudicate matters decided by BIA officials through exercise of discretionary authority. Even where BIA decisions are based on the exercise of discretion, however, the Board has authority to determine whether BIA followed proper procedures in arriving at its decision. See Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142, 144 (1983); Simmons v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 243, 247 (1986).

In this case, it appears from the record that BIA may not have given adequate consideration to the documents submitted by appellant or to the possible availability of security. Further, it is clear that BIA gave appellant incorrect appeals information, which may have impeded her ability to present her case adequately.

For these reasons, the Board finds that this case should be remanded to appellee for further consideration. On remand, appellee shall consider all documents presently in the record and shall notify appellant if further documents are needed. In accordance with 25 CFR 101.13, appellee may require appellant to give such security as he deems appropriate, if he concludes that she otherwise qualifies for a loan.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 22, 1988, decision of the Acting Anadarko Area Director is vacated, and this case is remanded to him for further consideration in accordance with this opinion.

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Anita Vogt
Administrative Judge

I concur:

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Kathryn A. Lynn
Chief Administrative Judge